IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

PLANNED PARENTHOOD OF AUSTIN FAMILY PLANNING, INC., PLANNED PARENTHOOD ASSOCIATION OF HIDALGO COUNTY TEXAS, INC., PLANNED PARENTHOOD ASSOCIATION OF LUBBOCK, INC., PLANNED PARENTHOOD OF CAMERON AND WILLACY COUNTIES, FAMILY PLANNING ASSOCIATES OF SAN ANTONIO, PLANNED PARENTHOOD OF CENTRAL TEXAS, PLANNED PARENTHOOD GULF COAST, INC., PLANNED PARENTHOOD OF NORTH TEXAS, INC., and PLANNED PARENTHOOD OF WEST TEXAS, INC., Plaintiffs,	§	CIVIL CASE NO. 1:12-CV-00322
vs.	§	
THOMAS M. SUEHS, Executive Commissioner, Texas Health and Human Services Commission, in his official capacity, Defendant.	§	

COMPLAINT

I. NATURE OF THE ACTION

1. This action is filed pursuant to 42 U.S.C. § 1983, to vindicate Plaintiffs' rights under the First and Fourteenth Amendments to the U.S. Constitution. Plaintiffs also raise state law claims pursuant to 29 U.S.C. § 1367. Plaintiffs challenge the federal constitutionality and the state statutory authority of 1 Texas Admin. Code §§ 354.1361-64 ("Affiliate Rule" and "Rule"), which bars Plaintiffs – family planning providers that do not provide abortion services – from participating in Texas's Women's Health Program ("WHP") because they publicly advocate to protect access to safe and legal abortion and/or affiliate with legally separate entities

that engage in that advocacy and/or are affiliated with legally separate entities that provide and advertise abortions.

2. In 2005, the Texas Legislature established WHP in order "to expand access to preventive health and family planning services for women." Tex. Hum. Res. Code § 32.0248(a). WHP originated as a demonstration project within the Medicaid program, approved and funded 90 percent by the federal government. WHP is now phasing out of the Medicaid program and apparently will continue as an entirely state-funded program.

3. The legislation authorizing WHP directed the Texas Health and Human Services Commission ("HHSC"), for the purposes of WHP, not to contract with entities that are "affiliates of entities that perform or promote elective abortions." Tex. Hum. Res. Code § 32.0248(h). Section 32.0248 did not define "affiliate" or "promote."

4. In implementing that statute and administering WHP, HHSC took the position that Section 32.0248(h) could not be constitutionally construed or applied to exclude Plaintiffs from the program. *See* Letter from then-Executive Commissioner of HHSC Albert Hawkins to Texas Senator Robert F. Deuell (Feb. 4, 2009) ("implementing the subsection (h) ban on contracting with organizations that are affiliates of abortion providers likely would be held unconstitutional by the courts").

5. Accordingly, HHSC has, until now, implemented the statutory no-affiliation directive consistent with its understanding of applicable federal court decisions including *Planned Parenthood of Houston and Southeast Texas v. Sanchez*, 403 F.3d 324 (5th Cir. 2005). Under *Sanchez*, the Texas Department of Health ("TDH") could not exclude Plaintiffs from participation in a Texas family planning program (one separate and distinct from WHP), as long as Plaintiffs maintained legal and financial separation from any affiliated entity that provides

abortion services, which Plaintiffs have done. Thus, Plaintiffs have participated in WHP since its inception. Moreover, Plaintiffs have been a critical component of that program, together providing more than 40 percent of the WHP services statewide in fiscal year 2010.

6. On February 23, 2012, HHSC adopted the new Affiliate Rule, to apply to WHP. The Rule defines the terms "affiliate" and "promote" so as to prohibit Plaintiffs from continuing to participate in the program because of their associations with the provision of abortion and with advocacy for access to abortion. Pursuant to Defendant Suehs' announced implementation plan for the Rule, unless he is enjoined by this Court, Plaintiffs will be removed from the program after April 30, 2012.

7. Plaintiffs seek declaratory relief because the Affiliate Rule imposes unconstitutional conditions on their eligibility to continue to participate in WHP. In particular, the Rule disqualifies Plaintiffs from eligibility to participate in WHP because of Plaintiffs' advocacy to protect access to safe and legal abortion and/or Plaintiffs' affiliation with organizations who advocate to protect access to safe and legal abortion and/or because they are affiliated with legally separate entities that provide and advertise abortions. Plaintiffs also seek declaratory relief under Texas law because HHSC exceeded its statutory authority in promulgating the Rule, which violates the Texas statutory scheme it purports to implement by defeating its principal stated purposes.

8. If enforced, the Affiliate Rule will cause irreparable harm to Plaintiffs and to tens of thousands of low-income women seeking family planning and other preventive health services. Accordingly, Plaintiffs seek appropriate injunctive relief.

II. JURISDICTION AND VENUE

9. Jurisdiction over Plaintiffs' claims is conferred on this Court by 28 U.S.C. §§ 1331 and 1367.

10. Plaintiffs' claim for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202 and by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

11. Venue is appropriate under 28 U.S.C. § 1391(b) because the Defendant resides in this District.

III. THE PARTIES

A. Plaintiffs

12. Planned Parenthood of Austin Family Planning, Inc. ("PPAFP") is a Texas not-for-profit corporation, headquartered in Austin, where it operates a health center that provides family planning services, including through WHP. PPAFP does not provide abortion services.

13. Planned Parenthood Association of Hidalgo County Texas, Inc. ("PPAHC") is a Texas not-for-profit corporation headquartered in McAllen. PPAHC provides family planning services, including through WHP, at four health centers in Hidalgo County. PPAHC does not provide abortion services.

14. Planned Parenthood Association of Lubbock, Inc. ("PPAL") is a Texas not-for-profit corporation headquartered in Lubbock. PPAL provides family planning services, including through WHP, at its health center in Lubbock. PPAL does not provide abortion services.

15. Planned Parenthood of Cameron and Willacy Counties ("PPCWC") and Family Planning Associates of San Antonio ("FPA") are Texas not-for-profit corporations headquartered

in San Antonio. FPA has four health centers, which do business as "Planned Parenthood," in the metropolitan San Antonio area, all of which participate in WHP. PPCWC has three health centers, located in Kingsville, Harlingen, and Brownsville, which participate in WHP. FPA and PPCWC do not provide abortion services.

16. Planned Parenthood of Central Texas ("PPCT") is a Texas not-for-profit corporation, headquartered in Waco, Texas, where it operates a health center that participates in WHP. PPCT does not provide abortion services.

17. Planned Parenthood Gulf Coast, Inc. ("PPGC") is a Texas not-for-profit corporation headquartered in Houston. PPGC serves a region of more than 400 miles across the Gulf Coast from Bryan to New Orleans. PPGC provides WHP services at 11 health centers in Texas: 5 in Houston, as well as centers located in Bryan, Dickinson, Huntsville, Lufkin, Rosenberg, and Stafford. PPGC does not provide abortion services.

18. Planned Parenthood of North Texas, Inc. ("PPNT") is a Texas not-for-profit corporation, headquartered in Dallas. PPNT provides family planning services at 21 health centers in North Texas. All of these health centers participate in WHP. PPNT does not provide abortion services.

19. Planned Parenthood of West Texas, Inc. ("PPWT") is a Texas not-for-profit corporation headquartered in Midland. PPWT provides family planning services at three health centers, all which participate in WHP. PPWT does not provide abortion services.

B. Defendant

20. Thomas M. Suehs is the Executive Commissioner of HHSC, the agency that is responsible for administering WHP and that adopted the Affiliate Rule. He is the government official responsible for implementation of the Rule. He is sued in his official capacity.

IV. LEGAL, LEGISLATIVE, AND REGULATORY BACKGROUND

A. *Planned Parenthood v. Sanchez*

21. In 2003, prior to the inception of WHP, the Texas Legislature attached a rider to Article II, Health and Human Services, of its annual appropriations bill, known as "Rider 8." Rider 8 applied to family planning funds from several federal programs and prohibited those funds from going to "individuals or entities that perform elective abortion procedures or that contract with or provide funds to individuals or entities for the performance of elective abortion procedures." Tex. House Bill 1 (2003).

22. Several Planned Parenthood entities who participated in those programs and also provided abortion services with their private funds brought a lawsuit against TDH challenging Rider 8 as unconstitutional. On appeal of the district court's issuance of a preliminary injunction, the U.S. Court of Appeals for the Fifth Circuit ruled that Rider 8 should be construed, if possible, to avoid being declared unconstitutional.

23. The Fifth Circuit explained that its "own reading of Rider 8 leads us to the conclusion that affiliates are permitted." *Planned Parenthood of Houston and Se. Tex. v. Sanchez*, 403 F.3d 324, 341 (5th Cir. 2005). Under the Fifth Circuit's reading, Rider 8 did "not preclude a family planning services provider from maintaining a contract with TDH while simultaneously creating a separate legal entity that performs abortions and receives no federal funds." *Id.* at 337-38. The Court explained, however, that if "the burden of forming affiliates . . . would in practical terms frustrate [Planned Parenthood's] ability to receive federal funds," Rider 8 would be preempted. *Id.* at 342.

24. On remand, TDH and the Planned Parenthood entities reached a settlement consistent with the holding of the Fifth Circuit. The Planned Parenthood entities created separate

corporate entities – with distinguishable names, separate boards of directors and governing bodies, detailed employee timekeeping, clear signage, and separate books and records – one for family planning services and one for abortion services. The family planning entities, some of whom are Plaintiffs here, continued to receive the family planning funds, and they have been audited by the State at least once every two years to ensure compliance with these requirements.

B. The Women's Health Program

25. In 2005, Texas enacted legislation directing HHSC to seek approval from the United States Department of Health and Human Services Centers for Medicare and Medicaid Services ("CMS") for a five-year demonstration project through the Medicaid program "to expand *access* to preventive health and family planning services for women." Tex. Hum. Res. Code § 32.0248(a) (emphasis added). CMS approved the original proposal, and the Women's Health Program began providing services on January 1, 2007.

26. Women are eligible to participate in WHP if they are least 18 years of age and have a net family income at or below 185 percent of the federal poverty level or if they participate in certain government programs, are presumed eligible for those programs, or have a family member who participates in those programs. *See* Tex. Hum. Res. Code § 32.0248(b).

27. WHP provides essential well-women services, including physical examinations, health screenings for breast and cervical cancer and sexually transmitted infections ("STIs"), and counseling and education about, and the provision of, contraception. *See* Tex. Hum. Res. Code § 32.0248(a). WHP does not pay for abortions.

28. The 2005 state legislative authorization for WHP contained the following directive to HHSC:

> (h) The department shall ensure the money spent under the demonstration project, regardless of the funding source, is not used to perform or promote elective

> abortions. The department, for the purpose of the demonstration project, may not contract with entities that perform or promote elective abortions or are affiliates of entities that perform or promote elective abortions.

Tex. Hum. Res. Code § 32.0248(h). It did not contain a definition of "affiliate" or "promote."

29. As explained above, since the inception of WHP, HHSC has implemented the statutory prohibition on the participation of "affiliates of entities that perform or promote abortions" consistent with its understanding of Supreme Court and Fifth Circuit precedent.

30. As the original authorization for WHP was set to expire in late 2011, the Texas Legislature, in the summer of 2011, enacted Rider 62 to Article II of the Budget which provides:

> Out of funds appropriated above in Goal B, *Medicaid,* the Health and Human Services Commission, contingent on receiving a waiver under Section 1115 of the Social Security Act, shall provide Women's Health Program services under Medicaid to women. Only women whose income and family size puts them at or below 185% of the Federal Poverty Guidelines and who meet all other Medicaid eligibility requirements are eligible for Women's Health Program services.

Rider 62 to Article II, Health and Human Services, House Bill 1 (2011) (emphasis added).

31. In addition, the 2011 Legislature enacted Senate Bill 7, which states that:

> The department shall ensure that money spent for purposes of the demonstration project for women's health care services under former Section 32.0248, Human Resources Code, or a similar successor program is not used to perform or promote elective abortions, or to contract with entities that perform or promote elective abortions or affiliate with entities that perform or promote elective abortions.

See Tex. Hum. Res. Code § 32.024(c-1). Like the 2005 legislative authorization, Section 32.024(c-1) does not define "affiliate" or "promote."

32. These provisions of Texas law – former Section 32.0248 and current Section 32.024(c-1) – are part of Chapter 32 of Texas's Human Resources Code. The express purpose of Chapter 32 is "to enable the state to obtain all benefits" for needy individuals that are "authorized under the Social Security Act or any other federal act." Tex. Hum. Res. Code § 32.001. Texas law requires that if any provision of that Chapter "conflicts with a provision of the Social

Security Act or any other federal act and renders the state program out of conformity with federal law to the extent that federal matching money is not available to the state, the conflicting provision of state law shall be inoperative." Tex. Hum. Res. Code § 32.002(b).

C. The Affiliate Rule

33. On February 23, 2012, HHSC adopted the Affiliate Rule. The Rule defines "affiliate" for the purposes of WHP as:

> (A) An individual or entity that has a legal relationship with another entity, which relationship is created or governed by at least one written instrument that demonstrates:
>
> (i) common ownership, management, or control;
>
> (ii) a franchise; or
>
> (iii) the granting or extension of a license or other agreement that authorizes the affiliate to use the other entity's brand name, trademark, service mark, or other registered identification mark.
>
> (B) The written instruments referenced in subparagraph (A) of this paragraph may include a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license.

1 Tex. Admin. Code § 354.1362(1). The Rule defines "[p]romotes" as "[a]dvocates or popularizes by, for example, advertising or publicity." 1 Tex. Admin. Code § 354.1362(6).

34. The Rule's prohibition on HHSC contracting with entities that perform or promote abortions or entities that are affiliated with entities that perform or promote abortions specifically excludes hospitals licensed under Texas Health and Human Safety Code Chapter 241. 1 Tex. Admin. Code § 354.1363; 1 Tex. Admin. Code § 354.1362(5).

35. The Rule took effect on March 14, 2012. Under HHSC's implementation plan, providers who do not certify compliance with the Rule will be removed from the program after April 30, 2012.

36. HHSC adopted the Rule in February 2012 even though CMS had previously advised HHSC in December 2011 that Texas's request to renew federal participation in WHP

would be denied if the Rule was implemented because the Rule conflicts with the requirement of the Social Security Act that "any individual eligible for medical assistance . . . may obtain such assistance from any institution, agency, . . . or person, qualified to perform the service . . . who undertakes to provide him such services." 42 U.S.C. § 1396A(a)(23). After HHSC proceeded to formally adopt the Rule, CMS reaffirmed its refusal to renew or extend the prior demonstration project and advised HHSC that it would continue federal funding for WHP through a "phase-out" period that will extend no more than nine months.

37. Governor Perry has instructed Defendant Suehs and HHSC to take steps so Texas can continue to provide the "vital health and wellness services" of WHP using only state funds. Thus, with or without federal participation in WHP, Defendant intends to continue WHP with the Affiliate Rule in force.

38. In its Rule adoption order, HHSC did not address the fact that the Rule would cause WHP to lose federal funding, which the program was enacted expressly to obtain. Nor did it address the fact that the Rule would decrease the availability of family planning services, which the program was expressly established to expand. HHSC's only response to the decreased availability of family planning services resulting from the Rule was that the agency was "expressly directed" by the Legislature to adopt the provider-excluding Rule, and that it has "taken steps" to recruit "additional qualified providers" and to "transition" Plaintiffs' WHP patients to other providers. 37 Tex. Reg. at 1699 (Mar. 9, 2012). HHSC did not meaningfully address the unconstitutionality of the Rule.

V. THE IMPACT OF THE RULE ON PLAINTIFFS AND WOMEN IN TEXAS

A. The Affiliate Rule Disqualifies Plaintiffs from WHP

39. Although Plaintiffs are all legally and financially separate from any entity that performs abortions and they do not encourage women to have abortions, the definitions of "affiliate" and "promote" adopted by HHSC bars each Plaintiffs' participation in WHP for numerous reasons, including:

(a) Each Plaintiff, either itself or through an affiliated entity, engages in advocacy and public education activities intended to protect and facilitate access to safe and legal abortion for women who choose to exercise their right to choose abortion.

(b) All but one Plaintiff are also affiliated with an entity that provides abortion care and that advertises that it provides those services.

(c) Although Plaintiffs and their related abortion providers have easily distinguishable names, as required by the *Sanchez* settlement, all use the registered service mark "Planned Parenthood" in providing medical services.

(d) Plaintiffs all are affiliates of, or ancillary organizations of affiliates of, Planned Parenthood Federation of America ("PPFA"), which also advocates for women's access to comprehensive reproductive healthcare, including abortion, and requires that its affiliates do the same. PPFA does not provide abortion care itself, but its member-affiliates offer that service throughout the United States and as of January 2013, all member-affiliates will be required to do so.

40. Put simply, the Affiliate Rule operates as a complete bar for Plaintiffs to be part of "Planned Parenthood" and also to participate in WHP. Indeed, HHSC stated this plainly in adopting the Rule, explaining that its purpose was "to prohibit the participation of specialty

providers that share a common mission or purpose with entities that perform or promote elective abortions." 37 Tex. Reg. 1696 (Mar. 9, 2012).

B. The Rule Will Irreparably Harm Plaintiffs and Their Patients and Disserves the Public Interest

41. Plaintiffs currently operate 49 health centers throughout the state of Texas where women can enroll in, and obtain services through, WHP. According to HHSC, in calendar year 2010, WHP served more than 103,000 low-income Texas women. In state fiscal year 2010, at least 49% of women who obtained services through WHP obtained some services at a Planned Parenthood provider, amounting to 39% of the claims and 46% of the reimbursements that year.

42. The Rule will cause severe, irreparable injury to Plaintiffs. Plaintiffs' combined reimbursements from WHP totaled nearly $13 million during fiscal year 2010; loss of that funding will severely impact their operating budgets. Without this funding, Plaintiffs will be forced to reduce services, close clinics, and/or lay off employees. Once these actions are taken by Plaintiffs, it would be very expensive – if not impossible – for them to resume operations as they are today.

43. These injuries to Plaintiffs and their patients are especially acute because in 2011, Texas's family planning program was cut by two-thirds, reducing it from $111.5 million during the 2010-2011 biennium to $37.9 million over the next two years. This reduction means that many fewer providers receive family planning funds; last year, more than 70 agencies received these funds, but by February 2012, there were only 41 agencies contracting with TDH for these funds. Plaintiffs, in particular, felt these reductions acutely; altogether, Plaintiffs closed 12 health centers in 2011 and 2012 as a direct result of those cuts. These cuts make the impact of losing WHP funding worse for Plaintiffs and all their patients, not just those in WHP.

44. Unless Plaintiffs completely disassociate themselves from their affiliated abortion providers, from PPFA, and from any entity that advocates for women's access to comprehensive reproductive healthcare, they will be forced out of WHP. This will mean that tens of thousands of women will be forced to choose between seeking services from Plaintiffs at substantially higher self-pay costs, trying to seek WHP services elsewhere, or forgoing care altogether.

45. Because these are women with family incomes at or below 185 percent of the federal poverty level, it will be difficult for them to self-pay. If they do, they likely will have to forgo some of the care for which WHP would have provided reimbursement. For example, some will forgo testing for certain types of cancer or STIs and/or switch to cheaper, but less effective, methods of contraception, thereby decreasing their overall health and placing themselves at greater risk of undiagnosed disease and/or unplanned pregnancy.

46. If these women instead elect to try to find another provider, doing so will not be easy. There are simply not enough WHP providers to absorb the tens of thousands of women who relied on Plaintiffs. There is already a shortage of primary care providers throughout the State. The other reproductive healthcare providers have limited capacity, and many of these providers have also faced recent funding cuts. This means that many of Plaintiffs' patients may be unable to find another provider who participates in WHP.

47. At a minimum, many of Plaintiffs' WHP patients will have to travel further (at greater expense to themselves) and/or wait longer for appointments. Delays in seeking testing and treatment for breast and cervical cancer as well as STIs will have devastating health consequences for some of these women. Lack of access to and delays in receiving family planning services can be expected to lead to an increase in unplanned pregnancies and, in turn, to an increase in abortions.

48. Given the difficulties of continuing to seek care either at Plaintiffs' health centers or alternative providers, many of Plaintiffs' patients will simply go without this preventive care altogether, resulting in them being at increased risk of undiagnosed cancer and STIs, unplanned pregnancies, and abortion.

49. The Affiliate Rule will also harm the public interest and Texas taxpayers because it will cause the State both to lose federal funding for WHP and have greater overall healthcare costs because the services Plaintiffs provide through WHP save the State money. For example, based on formulas used by the Legislative Budget Board, WHP saved more than $46 million in 2009 by preventing pregnancies that would have resulted in Medicaid-covered births. The State's share of those savings, after paying WHP expenditures, totaled almost $20 million in general revenue.

50. Plaintiffs have no adequate remedy at law.

CLAIMS FOR RELIEF

COUNT I – UNCONSTITUTIONAL CONDITION
(First Amendment to the U.S. Constitution)

51. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶1-50 above as if set forth fully herein.

52. The Affiliate Rule, and Tex. Hum. Res. Code § 32.024(c-1) if it requires that Rule, impose unconstitutional conditions on Plaintiffs' eligibility to participate in WHP because the Rule disqualifies Plaintiffs from eligibility based upon their advocacy to protect access to safe and legal abortion services, their affiliation with entities that advocate to protect access to safe and legal abortion services, and/or their affiliation with entities that advertise the availability of abortion services.

COUNT II – UNCONSTITUTIONAL CONDITION
(First Amendment to the U.S. Constitution)

53. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶1-52 above as if set forth fully herein.

54. The Affiliate Rule, and Tex. Hum. Res. Code § 32.024(c-1) if it requires that Rule, impose unconstitutional conditions on Plaintiffs' eligibility to participate in WHP because the Rule disqualifies Plaintiffs from eligibility based upon their association with Planned Parenthood Federation of America and/or with Planned Parenthood entities that provide abortion services and/or advocate to protect access to safe and legal abortion services.

COUNT III – UNCONSTITUTIONAL CONDITION
(Fourteenth Amendment to the U.S. Constitution)

55. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶1-54 above as if set forth fully herein.

56. The Affiliate Rule, and Tex. Hum. Res. Code § 32.024(c-1) if it requires that Rule, impose unconstitutional conditions on Plaintiffs' eligibility to participate in WHP because the Rule disqualifies Plaintiffs from eligibility based upon their providing abortion services through legally and financially separate affiliates.

COUNT IV – EQUAL PROTECTION OF THE LAWS
(Fourteenth Amendment to the U.S. Constitution)

57. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶1-56 above as if set forth fully herein.

58. The Affiliate Rule, and Tex. Hum. Res. Code § 32.024(c-1) if it requires that Rule, violate Plaintiffs' right to equal protection under the laws because it treats them differently from hospitals licensed under Texas Health and Human Safety Code Chapter 241 that perform or "promote" abortions and/or are "affiliated" with entities that perform and "promote" elective

abortion as those terms are defined in the Rule without adequate basis for the differential treatment.

COUNT V – INVALID RULE
(Texas State Law)

59. Plaintiffs hereby reaffirm and reallege each and every allegation made in ¶¶1-58 above as if set forth fully herein.

60. The Affiliate Rule is void and unenforceable under Texas state law because: (i) in promulgating it, HHSC exceeded its Texas statutory authority because the Rule is inconsistent with the Texas statute it purports to implement; and (ii) HHSC acted arbitrarily and capriciously in adopting the Rule, failing to take the relevant statutory factors into account and failing to engage in the reasoned decision-making required for adoption of a valid rule under Texas law.

WHEREFORE, Plaintiffs request that this Court:

1. Issue a declaratory judgment that the Affiliate Rule, and Tex. Hum. Res. Code § 32.024(c-1) if it requires that Rule, violate the rights of Plaintiffs by imposing unconstitutional conditions on Plaintiffs' participation in WHP, in violation of the First and Fourteenth Amendments to the United States Constitution;

2. Issue a declaratory judgment that the Affiliate Rule, and Tex. Hum. Res. Code § 32.024(c-1) if it requires that Rule, violate the rights of Plaintiffs by treating them differently from hospitals licensed under Texas Health and Human Safety Code Chapter 241 that perform or "promote" abortions and/or are "affiliated" with entities that perform and "promote" elective abortion as those terms are defined in the Rule without adequate basis for the differential treatment in violation of the Fourteenth Amendments to the United States Constitution;

3. Issue a declaratory judgment that HHSC exceeded its statutory authority in promulgating the Affiliate Rule because it is inconsistent with the Texas statute it purports to implement;

4. Issue a declaratory judgment that the Affiliate Rule is void because, in promulgating it, HHSC failed to provide reasoned justification in violation of Tex. Gov't Code §§ 2001.033 and 2001.035;

5. Issue preliminary and permanent injunctive relief, without bond, maintaining the status quo and restraining the enforcement, operation, and execution of the Affiliate Rule, and Tex. Hum. Res. Code §32.024(c-1) if that statute requires that Rule;

6. Grant Plaintiffs attorneys' fees, costs and expenses pursuant to 42 U.S.C. § 1988; and

7. Grant such further relief as this Court deems just and proper.

Dated: April 11, 2012

Respectfully submitted,

/s/ P.M. Schenkkan

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*Application for admission *pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2012, I served, via hand delivery, the foregoing Complaint, on the following:

Office of the Texas Attorney General
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/s/ P.M. Schenkkan
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